

Guidelines for Seeking Office of the Commissioner of Railroads Approval of New Railroad Crossings and Alterations of Existing Railroad Crossings of Streets and Highways

The Office of the Commissioner of Railroads (OCR) is the state agency with jurisdiction to approve the establishment and alteration of public highway crossings with railroads (section 195.29, Wis. Stats.). Any highway authority or railroad wishing to establish a new crossing or change an existing crossing must first obtain the approval of the OCR.

Wisconsin law requires OCR approval to establish a new rail/highway crossing, to relocate, close, alter or substantially change an existing crossing (See, especially s. 195.29 Stats.). The OCR also determines what warning devices are needed (See, s. 195.28 Stats.). The OCR can also require railroads to repair rough crossings (See, s. 86.12 Stats.). The review process is initiated by filing a petition with the OCR. The OCR then schedules a hearing to take evidence on the proposal. The hearing is typically held at a local site. After the hearing, the hearing examiner issues a proposed decision. A 15-day comment period follows and then the Commissioner issues the final decision. The OCR's decision is legally binding.

The OCR administrative rules govern our practice and procedure. Chapter RR 1, Wisconsin Administrative Code. **The rules require that the petitioner submit preliminary engineering plans or concept plans, state a proposed completion date for the project, and a proposed apportionment of costs.** Please see RR 1.025 (2).

The new rules also require that the petitioner send a copy of the plans, proposed completion date, and proposed cost apportionment to the railroad.

The OCR process normally takes about 4 months from the initial filing to a final decision. Petitioners can avoid delays in their projects by filing a petition as early as possible. The notice is typically issued within 2 weeks from when we receive the petition. The hearing is held about 30 to 45 days from the date of the hearing notice. The minimum notice period is 20 days. The proposed decision is generally issued within 30 to 60 days of the hearing and the final decision is usually issued about 30 days later. In uncontested cases, the OCR can skip the proposed decision and go directly to a final decision. This time frame can be compressed if a legitimate need exists. Complex cases may take longer. **A municipality can increase the likelihood that a new crossing will be approved by simultaneously proposing the closure of an existing crossing.**

The OCR also apportions costs for crossing work. Typically, the petitioning highway authority pays the cost for new crossings and relocated crossings. If a crossing is widened, the cost is typically split with the railroad based on the ratio of the existing crossing width to the new width. The railroad pays for the existing width and the highway authority pays for the added width. Cost-apportionment is, however, determined on a case-by-case basis and may vary from these rules of thumb.

The OCR also determines what warning devices are required at the crossing. State and federal funds are sometimes available to pay the cost for new railroad crossing signals. These funds, however, are quite limited and there is often a 2 to 3 year waiting list for this money, which is often beyond the proposed construction schedule. If a crossing can not be safely opened without automatic signals, the OCR will give highway authorities the option of paying for the crossing signals in order to keep the highway project on schedule. These costs can *not* be recouped from state or federal funds at a later date. Railroad crossing signals with gates usually cost at least \$180,000 and can be substantially more than that depending on the specific conditions (such as proximity of other signalized crossings, number of tracks, railroad switches, and so forth).

Prior to scheduling the hearing, the following information should be furnished to the OCR and to the

railroad/municipality:

- 1) Council/Board resolution supporting the project.
- 2) Proposed timing of the project.
- 3) Concept plans or preliminary engineering design plans showing the proposed changes.
- 4) The proposed cost apportionment for the project.

Please furnish copies of all correspondence and other information to the railroad. The OCR can provide addresses for railroads upon request. **The municipality should contact the railroad as soon as possible to discuss the project. While the OCR decides whether to approve a new crossing or a crossing change, the railroad often has useful information or legitimate concerns that can be addressed in the design process.**

The petitioner will generally carry the burden of proof. You will need to show what you want and why it is justified. Testimony is taken under oath.

Please arrange to have a witness who will testify on the overall project purpose, introduce the resolution and a map of the community or area involved. The person responsible for the engineering plan and profile should testify, discuss alternatives considered, and introduce the engineering information. This information should include alignments of the roadway and the track, profiles of the approaches to the intersection, distance and travel time to an alternate crossing, distance to adjacent crossings, volumes and speeds of highway and rail traffic, types of warning devices proposed, property lines involved, and sight distances that are to be available. Other information may also be relevant in any given situation. It is very helpful if this testimony is provided at the hearing in a written narrative form. Please furnish **at least three copies of any exhibits** at the time of the hearing.

Useful resource material:

American Association of State Highway and Transportation Officials (AASHTO) guidelines (*A Policy on Geometric Design of Highways and Streets*, 6th edition, 2011)

Chapter 17 of the Wisconsin DOT Facilities Development Manual

<https://trust.dot.state.wi.us/static/standards/fdm/index.htm>

Guidance on Traffic Control Devices at Highway-Rail Grade Crossings, FHWA Highway/Rail Grade Crossing Technical Working Group, 2002

<http://safety.fhwa.dot.gov/xings/collision/twgreport/#a71>

Please call 608/266-0276 or 266-7607 if you have any questions or visit <http://ocr.wi.gov>